

P-999/CI-88-917MODIFYING PROPOSED STIPULATION OF SETTLEMENT AND  
ADOPTING STIPULATION OF SETTLEMENT AS MODIFIED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the Applications for  
Authority to Provide Alternative Operator  
Services in Minnesota

ISSUE DATE: January 12, 1990

DOCKET NO. P-999/CI-88-917

ORDER MODIFYING PROPOSED  
STIPULATION OF SETTLEMENT AND  
ADOPTING STIPULATION OF  
SETTLEMENT AS MODIFIED

**PROCEDURAL HISTORY**

On April 28, 1988, Central Corporation (Central) filed an application with the Minnesota Public Utilities Commission (the Commission) to provide long distance operator services to presubscribed locations in Minnesota. On May 26, 1988, Teleconnect Long Distance Services and Systems Company (Teleconnect) made a similar filing.

On July 8 and July 12, 1988 respectively, the Department of Public Service (DPS or the Department) filed its Reports of Investigation and Recommendations on the filings. The Department recommended that the Commission deny the applications on public interest grounds.

On August 12 and 26, 1988, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments supporting the DPS recommendations and alternatively recommended a contested case proceeding to resolve the regulatory issues.

Between May 26 and December 16, 1988, the Commission received similar applications from the following companies : Long Distance USA, Inc.(LDUSA); National Telephone Services, (NTS); International Telecharge, Inc. (ITI); Operator Assistance Network (OAN); United States Transmission Systems (USTN); Automated Communications, Inc (ACI); Elcotel Long Distance Operator Services, Inc. (Elcotel); AmeriCall Dial "O" Services, Inc; and Telesphere International, Inc.

On October 26, 1988, the Commission issued its ORDER CONSOLIDATING DOCKETS AND

NOTICE AND ORDER FOR HEARING in Docket Nos. P-485/NA-88-241, P-478/M-88-359. In that Order the Commission initiated an investigation to determine whether the provision of Alternative Operator Services (AOS) is in the public interest, whether such services should be classified as subject to emerging competition under Minn. Stat. § 237.59, subd. 5 (1988), and under what terms and conditions such services should be regulated by the Commission.

On November 14, 1988, Central filed a Motion for Withdrawal of Application for Certificate of Authority and Tariff Filing with the Commission.

On December 16, 1988, the Commission consolidated all of the applications from the other companies and issued its ORDER ACCEPTING WITHDRAWAL OF PETITION, CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING in this docket.

On January 30, 1989, Elcotel filed a letter with the Commission requesting withdrawal of its application.

The Commission granted interim authority to applicants who met certain consumer protection requirements to provide AOS during the pendency of this proceeding.

The following parties filed direct testimony by

February 13, 1989: the RUD-OAG, DPS, ITI, NTS, Long Distance/USA, and Teleconnect. The following parties filed rebuttal testimony by March 10, 1989: RUD-OAG, DPS, ITI, NTS, Teleconnect, Long Distance/USA, MCI Telecommunications Corporation, Inc., AT&T, and Operator Assistance Network, Inc. The RUD/OAG, the DPS, and NTS filed surrebuttal testimony by April 3, 1989.

On April 10, 1989, the parties filed a Stipulation of Agreement with the Administrative Law Judge (ALJ). As a result, evidentiary hearings before the ALJ were cancelled and the contested case proceeding was suspended.

On April 25, 1989, at a meeting conducted by the ALJ, the Commission Staff met with the parties.

On May 12, 1989, the parties filed a joint response to the Commission Staff's concerns.

On June 9, 1989, the ALJ filed his FINDINGS OF FACT, CONCLUSIONS, OF LAW, RECOMMENDATION AND MEMORANDUM with the Commission. The ALJ recommended that the Commission accept the proposed Stipulation and enter an Order finding that AOS is in the public interest. The ALJ also recommended that the Commission defer or

postpone its inquiry as to whether AOS is subject to emerging or effective competition until more and better evidence is available.

On June 26, 1989, the RUD-OAG and the DPS filed Exceptions to the ALJ Report. On June 27, 1989, ITI filed its Exceptions to the ALJ's Report.

The Commission met on September 7, 1989 to consider the Stipulation and the ALJ's Report. At that meeting the Commission decided that it needed more information to fully analyze this matter before making its decision.

On September 28, 1989, the Commission sent a list of thirteen questions to each of the parties and asked them to respond to the questions by October 19, 1989.

The Commission received separate responses from the following parties: the DPS; ITI, RUD-OAG; Teleconnect; NTS; OAN; NWB; and MCI.

The Commission met again on November 20, 1989 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **Jurisdiction**

Alternative Operator Services (AOS) are interLATA/intraLATA long-distance, operator-assisted services, accessed by dialing "O" and are provided from subscriber locations such as hotels, motels, airports, payphones, hospitals, dormitories, or other locations with transient end-users, in lieu of "O" services provided by local exchange companies. AOS includes but may not be limited to person-to-person, collect or third-party-billed operator-assisted, long-distance calls. Companies may provide AOS and other services. Providers of AOS are telephone companies as defined by Minn. Stat. § 237.01, subd. 2 (1988).

The Commission has jurisdiction over this matter pursuant to Minn. Stat. Chapter 237, specifically Minn. Stat. §§ 237.01, 237.02, 237.06, 237.076, and 237.59.

### **The Competitive Status of AOS**

In its Notice and Order for Hearing in this matter, the Commission instructed parties to address two basic questions. The first was whether alternative operator services are in the public interest and should be allowed in Minnesota and the second was whether alternative operator services could or should be classified as emergingly competitive for purposes of regulation.

The parties' Stipulation does not resolve the issue of the competitive status of AOS. For differing reasons, the parties argue that the status of AOS can be resolved at a later time.

The Commission will defer its decision on this issue. The record in this matter is inadequate for a careful analysis and thorough evaluation of the competitive condition of AOS. Further, the Commission agrees with the Department and the RUD-OAG that the terms and conditions imposed on AOS providers in this Order will protect consumers from abuses that could result if AOS were

not, in fact, a competitive service. For a competitive service, the demands and standards of the marketplace can effectively protect consumers. Here, the conditions of the Stipulation as modified by the Commission will do the same. The Commission concludes that it will defer its determination of the competitive status AOS until a later date.

### Settlement Procedures

The Commission has before it a Stipulation of Settlement from the parties which asks the Commission to approve the provision of AOS in Minnesota if the AOS providers meet certain conditions. The Commission will accept the proposed Stipulation with some modifications which it believes are necessary to make the offering of this telephone service serve the public interest. The Commission finds that the existing record does not contain substantial evidence that the offering of AOS in Minnesota is in the public interest without the modifications it deems necessary.

Minn. Stat. § 237.076 (Supp. 1989) sets forth the procedures to be followed here. It states in relevant part:

The commission may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence. If the commission does not accept a settlement, it may issue an order modifying the settlement, subject to the approval of the parties. A party has ten days after entry of the order, or of an order disposing of a petition for reconsideration, in which to reject the proposed modification. If no party rejects the proposed modification, the commission's order becomes final. If the commission rejects a settlement or if a party rejects the commission's proposed modification of a settlement, the matter must be referred to the administrative law judge assigned to the case for further proceedings. Minn. Stat. § 237.076 (Supp. 1989).

### The Public Interest

AOS is a telephone service provided by telephone companies. The threshold issue here is whether it should be provided at all in Minnesota. This requires a basic public policy determination that the service is in the public interest.

Here the Commission agrees with the Department and the RUD-OAG that with certain conditions AOS is in the public interest. The Commission has modified some of the terms of the Stipulation and added other terms which it considers necessary for the provision of AOS to meet the public interest standard. A discussion of those terms follows.

### Initial Rates

The Commission will modify the Stipulation to require that AOS initial rates may not exceed the approved tariffed rates of AT&T in effect on the date of this Order for similar services from transient locations. The Commission will allow AOS providers twenty days to comply with this requirement.

The Stipulation provides that AOS rates, inclusive of operator charges, may not exceed the highest approved tariffed rates, as of April 10, 1989, of a certified interexchange carrier providing similar

services. The Commission believes this term is unnecessarily confusing. The Commission will eliminate any possible confusion about the initial rates by specifying that initial rates may not exceed the highest approved tariffed rates of AT&T for similar services. The Commission notes that the AOS providers who currently have interim authority to provide AOS are capped by the rates of AT&T. The Commission believes that requiring AOS providers to charge rates that do not exceed those currently authorized for AT&T is reasonable for initial rates as end-users are aware of and expect that level of rates. Further, this requirement will make compliance easier for the providers.

Finally, the Commission notes that AT&T has reduced its rates for operator services since most of these applicants received interim authority to provide AOS. The Commission will require AOS applicants here to charge rates equal to or lower than AT&T's rates in effect as of the date of this Order. This will put all companies on an equal footing, avoid confusion, and will benefit end-users.

Future rate changes will be made only after Commission approval and in accordance with existing Minnesota law.

#### Access to Other Carriers

AOS providers must ensure access to other providers. AOS providers may not block access to other carriers and must advise an end-user that access to other certificated carriers is available and how to gain that access if asked by the end-user.

The Commission believes that these terms of the Stipulation ensure that end-users are free to use the AOS provider selected by the owner of the host facility or to choose any other carrier. These provisions will eliminate the abuses that captive customers of an AOS company could suffer.

#### Notices

The Stipulation further calls for AOS providers to give certain notices, oral and written, to end-users. Orally, the AOS provider must identify himself both prior to and following all calls handled by a live operator. This identification must be given in enough time to allow pre-billing disconnect on all calls handled on an automated basis. In all cases, the AOS provider must be clearly and consistently identified with the name or acronym used on printed notices (described below) and, after March 30, 1990, on the end-user's bill. Also, the AOS provider is required to quote on request all charges that will be incurred by the end-user.

The Commission believes that these terms are consistent with the public interest. They provide an end-user with knowledge of the existence of the AOS provider and the rates that providers will charge the end-user. Coupled with the notification that AOS providers offer access to other carriers, the end-user can make an informed decision in choosing a carrier for his operator-assisted call.

Under the parties' Stipulation, the contracts between AOS providers and their subscribers (the host facilities) must require that written notice of the following information be provided on or near the telephone. The name of the AOS provider; dialing instructions for emergency numbers, the local exchange operator, local telephone numbers, and the toll network for access to other carriers;

notification that rates are available at no charge upon request and instructions for making the request; the types of billing options available to the end-user and notice that the AOS provider's rates will apply; and a toll free number for complaints and inquiries.

The Commission believes that the terms listed above will inform the end-user and help him in making a knowledgeable choice. The Commission will approve them. However the Commission believes that this written notice must be supplemented to fully apprise the end-user of his choices.

The Commission believes that the written notice provided to the end-user should state the rates the AOS provider will charge. Under the Stipulation, this information is available upon request. The Commission believes that the end-user should not have to request information on the rates he will be charged; an AOS provider should list the rates to be charged on the notice described above. This will actually save time for both the end-user and the AOS provider who will not be using operator time to explain the rates to be charged.

Also, a host facility contracts with an AOS provider to be the "carrier of choice" for the host facility's patrons. The host facility is commonly paid a commission on all AOS calls that are carried by the AOS provider chosen by the host facility. The Commission believes that end-users should know this before accepting the services of the host facility's AOS provider. Therefore, the Commission will require AOS companies to post the amount of the commission it pays the host facility for the calls it carries. The AOS provider can give this information by stating either a percentage or the actual dollar amount for the commission. The similarities between this information and the information already provided by host facilities informing end-users of surcharges for using the phone are obvious.

The Commission finds that these notifications are not onerous to provide and any burden in providing them is easily outweighed by the benefit to the customer in having this additional information to decide which carrier will carry his operator-assisted call. This information serves the public interest.

### Emergency Calls

The parties' Stipulation provides standards for the handling of emergency calls: that AOS providers have the technical capability to transfer an end-user's location to an appropriate emergency service provider from the operator's center within 5 seconds; that the AOS provider maintain the capability to keep the line until the emergency service is dispatched; that AOS providers train their operators to ensure prompt reliable responses to emergencies; and that AOS providers handle emergency calls free of charge. If the AOS provider cannot do the above, the AOS provider must route emergency calls to a carrier capable of meeting these standards.

The Commission is committed to ensuring that effective access to emergency services be provided to all end-users who may use AOS. The standards set forth in the Stipulation address the Commission's concerns and will provide safe, reliable, and quick access to emergency services for end-users. The Commission will approve these standards.

### Billing

The Commission will modify the Stipulation's billing provisions.

The Commission will require that by March 30, 1990, an end-user's bill must reflect the AOS provider's name. An end-user will commonly be billed for AOS services by his local exchange company. If an end-user has a question or a complaint regarding AOS charges, he should be able to contact the AOS provider directly. Currently, a majority of end-users are not able to do so in Minnesota, because the bill for the AOS does not reflect the provider's name. This is confusing to the end-user and tracking down a responsible person to answer a question or a complaint is needlessly time-consuming. The Commission, here, is balancing the interests of the end-user with the need of the AOS providers and the local exchange companies to develop a billing program. From the statements of the parties in this proceeding, the Commission believes that billing arrangements can be implemented by March 30, 1990 and that requiring them to be made by that time is a reasonable compromise to the problems presented by current billing procedures.

The Commission finds that the remaining terms of the Stipulation referring to billing are reasonable and will approve them. End-users are familiar with the type of billing proposed in the Stipulation and it provides the end-user with enough information to understand his bill and to challenge it if necessary. They include: billing of each call from originating to terminating points; with the exception of commercial credit card bills, the bill must show the date of the call, originating point, terminating point, length of call, and rate period applied; no charges for uncompleted calls and refunds of any amounts collected for uncompleted calls; and billing in time increments of one minute or less.

#### Complaint Procedure

The Stipulation provides that all AOS bills include a toll-free number for an end-user to use in questioning or complaining about a bill. It provides that the AOS provider adopt written procedures for handling: requests for bill adjustments; billing for wrong numbers and incomplete calls; inability to place calls when using the AOS provider; end-user's lack of knowledge of the AOS provider; dissatisfaction with billing detail; and responding to complaints/inquiries in a timely manner. Additionally, the AOS provider must submit to the Commission and the Department on a timely basis, a copy of all written complaints and the provider may report on the resolution of such complaints.

The Commission believes that these terms of the Stipulation are reasonable and necessary for the provision of AOS services in Minnesota. The end-user may be unfamiliar with a particular AOS provider; therefore, clear and complete guidelines for the handling of customer complaints are essential to avoid or mitigate customer confusion or dissatisfaction.

The remaining terms of the Stipulation require AOS providers to comply with Minnesota law and rules including refund responsibility, keeping an office in the state, complying with applicable quality of service and service disconnection standards, and not providing local exchange services. Clearly, these providers are telephone companies subject to the Commission's authority and rules. Further, AOS providers are required to report the percentage of intra-state usage to the local exchange company with respect to non-Feature Group D. This is reasonable because it helps the local exchange company determine level of usage for planning purposes and reflects earlier Commission Orders. In the Matter of an Investigation Into Intrastate Access Charges of Twenty-



Three Rate-Regulated Telephone Companies Serving Within the State of Minnesota, Docket No. P-421/CI-83-203 et al. (June 29, 1984); In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate Intercity Telecommunications Services Within the State of Minnesota, Docket No. P-442, P-443, P-444, P-421, P-433/NA-84-212 (October 15, 1985).

#### Monitoring

The Stipulation contains several provisions requiring AOS providers to provide documents and information to the Commission and the DPS so that those bodies can supervise the providers compliance with this Order. These are necessary and reasonable to ensure that AOS is provided in Minnesota in a manner which is consistent with the public interest and the Commission will approve them.

#### RUD-OAG PETITION TO WITHDRAW PETITION

On December 27, 1988, the RUD-OAG filed a petition with the Commission requesting that the Commission clarify that AT&T operator services have not been determined to be subject to emerging competition. On September 20, 1989 the RUD-OAG filed a letter with the Commission asking that it be allowed to withdraw its December 27, 1988 petition to assist in resolving this AOS case.

The Commission will grant the RUD-OAG's request because it is not necessary to address this issue to resolve this docket and the RUD-OAG is free to reintroduce its concerns at a later time.

### ORDER

1. The Commission hereby grants the RUD-OAG's request to withdraw its petition in Docket No. P-442/EC-89-28.
2. The Commission hereby grants the exceptions of the DPS and the RUD-OAG to the Administrative Law Judge's Conclusion of Law number 4 which states that operator services are in the public interest when offered in the manner originally proposed by Central Corporation and Teleconnect.
3. The Commission hereby denies the language changes requested by ITI in its exceptions to the Administrative Law Judge's Report.
4. The Commission hereby defers action on the DPS and RUD-OAG exceptions to the Administrative Law Judge's Conclusions of Law numbers 6 and 7 that state that it is impossible to determine from the record in this matter whether AOS is subject to emerging competition as defined in Minn. Stat. §237.59 or to determine whether AOS is classified as a noncompetitive service under Minn. Stat. § 237.16 or should be classified as a competitive service under Minn. Stat. § 237.59.
5. The Commission hereby modifies the Stipulation of Settlement of the parties and adopts the

Stipulation of Settlement with the following modifications:

- A. Amend the language of Part III. CONDITIONS OF SERVICE to add:
    - f. the AOS provider's rates;
    - g. the percentage or actual dollar amount of the commissions paid to the owner of the host facility by the AOS provider.;
  - B. Require that within 20 days of the issuance of this Order, no AOS initial rates may exceed the rates charged by AT&T for similar services from transient locations;
  - C. Require that by March 30, 1990, all AOS bills include the AOS provider's name;
  - D. Require that local telephone service not be disrupted for non-payment of AOS charges.
6. The Commission hereby orders the DPS to monitor the activities of the AOS providers and promptly report any violation of the Stipulation to the Commission;
7. All applicants currently operating under interim authority to must submit compliance filings to the DPS within 30 days of the issuance of this Order. Applicants certified by the DPS as satisfying the provisions of the Stipulation will be granted permanent authority to provide AOS at a separate Commission meeting. The compliance filings must include:
- (a) new or updated tariff pages showing AOS rates and surcharges;
  - (b) form contracts with subscribers from transient locations;
  - (c) written procedures for handling billing disputes, bill adjustments, wrong numbers, incomplete calls, etc.

(d) sample of stickers or other information to be displayed at or near the AOS providers's phone or equipment;

(e) a list of the AOS provider's billing agent(s), a description of their services and sample of current bills;

8. The DPS shall submit a report with recommendations on the compliance filings of the AOS providers within 90 days of the issuance of this Order.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson  
Acting Executive Secretary

(S E A L)